

## Memorandum

To: The Honorable Julia Weller, Clerk of the Supreme Court of Alabama

From: Professor Penny Davis, Chairman of the Alabama Advisory Committee on Child Support Guidelines and Enforcement

Date: November 16, 2021

Re: Recommendations for Child Support Guidelines and Schedule Update

Rule 32(G), Alabama Rules of Judicial Administration, provides, in pertinent part:

"The Advisory Committee on Child-Support Guidelines and Enforcement (hereinafter 'the Committee'), appointed by the Supreme Court, shall, at least once every four years, review the child-support guidelines and the schedule of basic child-support obligations to ensure that their application results in appropriate child-support determinations. Any recommendations concerning the child-support guidelines and/or the schedule of basic child-support obligations shall be reduced to writing and sent by the chairman of the Committee to the clerk of the Supreme Court for review by the Supreme Court."<sup>1</sup>

At its June 4, 2020, meeting the Committee voted to have the Alabama Administrative Office of Courts ("AOC") contract with the Center for Policy Research ("CPR") to assist the Committee in meeting this requirement.<sup>2</sup> Dr. Jane Venohr, an economist with CPR, has provided

extensive information and guidance for the Committee for over a year. After much discussion and deliberation, the Committee makes the following recommendations to the Court.<sup>3</sup>

This memorandum sets forth the Committee's recommendations with regard to updating the Child-Support Guidelines and the Schedule of Basic Child Support Obligations ("the Schedule") along with the rationale behind those recommendations. There are four recommendations that will be discussed: (1) the Schedule update; (2) changes regarding the treatment of costs of health-care coverage and work-related child-care; (3) changes regarding the Self-Support Reserve ("SSR") adjustment; and (4) the implementation of a Zero Order provision.

### I. The Schedule update<sup>4</sup>

The Committee recommends that the current Schedule be updated. The Schedule was most recently updated effective January 1, 2009, using data from 2007. An update will cause the Schedule to reflect the most recent economic data available.

Dr. Venohr discussed several methodologies that could be used to update the Schedule.<sup>5</sup> She noted that most states use the Betson-

Rothbarth measurements.<sup>6</sup> Additionally, the methodology used in the current Schedule is the Betson-Rothbarth realigned for Alabama incomes. Dr. Venohr recommended, and the Committee agrees, that the Schedule should be updated using the using the fifth Betson-Rothbarth study (which is the most current) realigned for Alabama incomes.<sup>7</sup>

The Committee also recommends that the Schedule be expanded to address combined monthly gross incomes up to \$30,000. The current schedule only addresses combined monthly gross income amounts up to \$20,000. Because incomes have increased since the Schedule was updated and because the data for higher incomes is now available, the Committee recommends expanding the Schedule to include combined monthly gross incomes up to \$30,000 to aid parties, attorneys, and judges in setting an appropriate child-support obligation.

We also note that, because the Schedule will address combined monthly incomes down to \$0, the Committee recommends striking out the language in Rule 32(C)(1) allowing "[t]he court to use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels." The Rule, as amended, will

still allow "discretion in determining child support in circumstances where combined adjusted gross income ... exceeds the uppermost levels of the schedule."

Finally, the Committee recommends making a revision to Rule 32(A)(1)(e) to reflect that the assumption that the custodial parent will claim the federal and state income-tax exemptions for the children in that parent's custody is not based on the Schedule but, instead, is based on the Internal Revenue Service tax code.

## II. Changes regarding the treatment of costs of health-care coverage and work-related child-care<sup>8</sup>

Under the current Guidelines, both work-related child-care costs and health-care-coverage costs are considered in determining the total child-support obligation. However, there is only an adjustment for the payment of the costs of health-care coverage. As a matter of fairness and consistency, the Committee recommends that an adjustment for the payment of work-related child-care costs be added to Rule 32(B)(8) and the Form CS-42 Worksheet ("the Worksheet").

The Committee also recommends amending the Worksheet so that

the payment of amounts for work-related child-care costs and health-care-coverage costs are only required to be entered once instead of twice.<sup>9</sup>

### III. Changes regarding the Self-Support Reserve ("SSR") adjustment<sup>10</sup>

The next issue that must be addressed is what changes should be made with regard to the SSR adjustment. Dr. Venohr pointed the Committee to 45 C.F.R. § 302.56, which requires that child-support guidelines must "[t]ake[] into consideration the basic subsistence needs of the noncustodial parent".<sup>11</sup> Currently, Alabama addresses that concern through the implementation of a SSR adjustment built into the Schedule.

The Committee recommends updating the amount of the SSR from the 2007 federal poverty guidelines, adjusted for Alabama incomes to the 2021 federal poverty levels, adjusted for Alabama incomes. This update to the SSR amount will be consistent with the updates to the Schedule and will result in a SSR of \$981 as contrasted with the current SSR amount of \$851.

The Committee also recommends that the method of implementing the SSR adjustment be changed. Specifically, the Committee recommends that an SSR calculation be performed on the Worksheet instead of building

the SSR adjustment into the Schedule. Dr. Venohr explained that showing the SSR calculation on the Worksheet would aid in transparency.<sup>12</sup> Additionally, the amount of the SSR could be updated easily without updating the entire Schedule.<sup>13</sup> She noted that that flexibility "is an added advantage due to the uncertainty of federal minimum wage changes."<sup>14</sup>

The Committee recommends placing the SSR calculation after the adjustment for child-care and health-care-coverage costs on the Worksheet for three reasons. First, Dr. Venohr noted the advantage of calculating the SSR adjustment after considering the child-care and health-care-coverage costs is that "it prioritizes the subsistence needs of the obligated parent first."<sup>15</sup> Second, because cases in which the order that the SSR adjustment is calculated will make a difference are infrequent.<sup>16</sup> Third, because the calculation of the SSR adjustment after the calculation of child-care and health-care coverage costs results in a simpler Worksheet than calculation of the SSR adjustment before those expenses.

Dr. Venohr explained to the Committee that, if the SSR adjustment is automatically included in the Schedule amounts, a tax rate assumption is included. However, if the SSR calculation is moved to the Worksheet,

in order to account for taxes, there must be an economic incentive added.<sup>17</sup>

To apply an economic incentive, the amount of income available for support after adjusting for the SSR will be multiplied by a certain percentage so that not all of the increased earnings are considered in determining the child-support obligation. The Committee recommends that there be an economic incentive implemented by using a percentage of 85%. The Federal and State payroll taxes for full-time minimum wage is 13%. Rounding to 85% addresses the payroll taxes and also allows the obligor to keep a small portion of his or her increased earnings.<sup>18</sup>

The Committee recommends that, if the income available for support after considering the SSR is less than \$50, a \$50 minimum amount be entered. Dr. Venohr explained in her May 13, 2021, memo:

"A minimum order typically applies when income is less than the SSR. Note that the amount of the minimum order is a policy decision. Most states [including Alabama] use \$50 per month, although several states use more or less. Some states leave it to court discretion."

Dr. Venohr explained that a 1987 publication aimed at helping states develop child-support guidelines recommended that states adopt a minimum order to demonstrate that all parents, no matter how low his or

her income, have a responsibility to support the child.

#### IV. Zero Order Provision<sup>19</sup>

The Committee recognizes that there are certain situations in which a zero child-support order is appropriate, specifically where the obligor has no gross income and only receives means-tested assistance or where the obligor is incarcerated or institutionalized for a period of more than 180 consecutive calendar days. The Committee recommends in those instances, that there should be a rebuttable presumption that a zero order be entered. The proposed Committee Comments to the Amendments would point out that the Rule 32(B)(5) (concerning the imputation of income in cases of voluntary unemployment or voluntary underemployment) is unaffected by the zero order provision.

#### Conclusion

In conclusion, the Committee recommends the following:

(1) The Schedule should be updated using the fifth Betson-Rothbarth study (which is the most current) realigned for Alabama incomes. The maximum combined monthly gross income in the Schedule should be expanded to \$30,000. The language in Rule 32(C)(1) allowing "[t]he court



to use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels" should be deleted. Rule 32(A)(1)(e) should be amended to reflect that the assumption that the custodial parent will claim the federal and state income-tax exemptions for the children in that parent's custody is not based on the Schedule but, instead, is based on the Internal Revenue Service tax code.

(2) Rule 32(B)(8) and the Worksheet should include an adjustment for work-related child-care costs and should be amended so that the amounts for work-related child-care costs and health-care-coverage costs are only required to be entered once.

(3) The amount of the SSR should be updated to the 2021 federal poverty levels, adjusted for Alabama incomes, \$981. The SSR calculation should be added to the Worksheet after the calculation of child-care and health-insurance expenses. An economic incentive should be implemented by using a percentage of 85%. If the income available for support after considering the SSR is less than \$50, a \$50 minimum amount should be entered.

(4) If the obligor has no gross income and receives only means-tested

assistance, or, if the obligor has no gross income and is incarcerated or institutionalized for a period of more than 180 consecutive calendar days, there should be a rebuttable presumption that a zero-dollar order shall be entered.

(5) If the Court issues an order amending Rule 32, the Comment to Rule 32, Form CS-42, and/or the Schedule of Basic Child-Support Obligations, the Committee recommends that the effective date of the order be at least three months from the date the order is issued. Those three months will provide sufficient time to make changes in automated systems, policies, etc. and to inform court officials and employees and Department of Human Resources staff of the changes.

## Appendix

A. Proposed updated Schedule

B. Proposed amendments to Rule 32, Ala. R. Jud. Admin.

C. Proposed amended Worksheet

D. Proposed Committee Comments to the Amendments.

E. Entire Rule 32 Ala. R. Jud. Admin., and Comments with redlined proposed changes.

## Endnotes

1. Additionally, Alabama is required by 45 C.F.R. § 302.56(a) to undertake a review of its child-support guidelines "at least once every four years." "[A]s part of that review, [Alabama must] consider economic data on the cost of raising children." September 14, 2020, revised September 29, 2020, Report submitted by Dr. Jane Venohr; 45 C.F.R. § 302.56(h)(1).

2. CPR has assisted over 30 states, including Alabama, with child-support guidelines reviews. Letter dated May 26, 2020, from Jessica S. Pearson, PhD., Director of CPR to Bob Maddox, Staff Attorney, Legal Division of AOC. Their 2008 proposal to Alabama was adopted by the Committee and the Supreme Court of Alabama effective January 1, 2009. AOC entered into a contract with CPR in an amount not to exceed \$20,000 for the period June 15, 2020, through September 30, 2020, and a separate contract not to exceed \$25,000 for the period October 1, 2020, through September 30, 2021. The amounts in both contracts were included in a Title IV-D funding budget between the Alabama Department of Human Resources ("DHR") and AOC; that budget provides that 66% will be reimbursed out of federal Title IV-D funds by DHR and the other 34% paid by AOC.

3. October 1, 2021, Committee meeting transcript.

4. The proposed updated Schedule is attached as Appendix A.
5. The six methodologies discussed by Dr. Venohr were (1) the Betson-Rothbarth 5 adjusted for Alabama prices, (2) the Betson-Rothbarth 5 realigned for Alabama incomes, (3) the Betson-Rothbarth 5 using United States prices, (4) the United States Department of Agriculture ("USDA") measurements for the Southern Region, (5) the Rodgers-Rothbarth, and (6) the Comanor.
6. March 12, 2021, Committee meeting transcript.
7. The Committee discussed whether there should be a cap on the percentage increase to the basic schedule amounts from the existing schedule amounts. Implementing a cap would ensure that no obligor's child-support obligation would increase more than a certain percentage to avoid "sticker shock" or a flood of modification actions. However, Dr. Venohr pointed out that "there [is] no economic evidence that says [Alabama] ha[s] to or should" cap the amount of increases in the child-support obligation. March 12, 2021, Committee meeting transcript. She also estimated that only approximately 5-7% of child support orders would increase more than 10% (the percent increase at which there is "a rebuttable presumption that child support should be modified"). Considering that information, the Committee does not recommend implementing a cap on percentage increases. However, the Committee Comments will point out that the court may consider a deviation where there is a large increase in a child-support order as a result of the application of the new schedule and the "application of the guidelines would be manifestly unjust or inequitable". Rule 32(A)(ii), Ala. R. Jud. Admin. The proposed Committee Comments to the Amendments are attached as Appendix D.

The Committee also notes that Dr. Venohr pointed out that the largest decrease in the child-support obligation of lower-income obligors would be \$25. March 12, 2021, Committee meeting transcript. Because of the small maximum decrease, a cap on the lower end is not necessary. January 7, 2021, Committee meeting transcript.

8. The proposed amendments to Rule 32 incorporating these changes is attached as Appendix B. The proposed amended Worksheet incorporating these changes is attached as Appendix C.
9. This amendment is modeled from West Virginia's Worksheet.
10. The proposed amendments to Rule 32 incorporating these changes is attached as Appendix B. The addition will be a new subsection (C)(5). The proposed amended Worksheet incorporating these changes is attached as Appendix C.
11. December 31, 2020, Memorandum submitted by Dr. Jane Venohr.
12. March 8, 2021, Memorandum submitted by Dr. Jane Venohr.
13. December 31, 2020, Memorandum submitted by Dr. Jane Venohr.
14. March 8, 2021, Memorandum submitted by Dr. Jane Venohr.
15. March 12, 2021, Committee meeting transcript.
16. Dr. Venohr noted that whether to place the SSR adjustment lines before or after the child-care and health-care-coverage costs is not "a big issue because it just does [not] happen that very often that those expenses are considered in the low income area of the schedule." March 12, 2021, Committee meeting transcript.
17. Dr. Venohr gave the following example in her December 31, 2020 memorandum:

"[A]ssume an obligor has a gross income of \$1,157 per month, which is \$100 less than full-time earnings at the current minimum wage of \$7.25 per hour (\$1,257 per month). The maximum amount of child support that could be ordered assuming a [SSR] of \$1,063 is \$94 per month. So strict application of the SSR would assign every additional dollar of additional income to child support. The reality, however, is that the obligated parent incurs payroll taxes on that additional \$100 in income...."

18. The Committee discussed whether the percentage used to calculate the economic incentive should change as the number of children for whom support is being determined increases. Doing so would recognize the reality that, as the number of children increases, a higher percentage of a parent's income is used for child support. However, the majority of child-support orders in Alabama are for one child, and using a variable percentage would somewhat complicate the calculation. Professor Davis noted that, when you are considering a low income, varying the percentage by 5 to 10% will not make a large difference. The Committee ultimately decided not to recommend changing the percentage with the number of children for whom support is being determined.

19. The proposed amendments to Rule 32 incorporating these changes is attached as Appendix B. The addition will be a new subsection (C)(6). The proposed amended Worksheet incorporating these changes is attached as Appendix C.